

EXHIBIT A

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**FILED
SAN MATEO COUNTY**

MAY 25 2017

~~Clerk of the Superior Court~~

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

10 KYLE OLBERDING, Individually and on Behalf
11 of All Others Similarly Situated,

Case No.

1761V02307

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE SECURITIES ACT
OF 1933**

JURY TRIAL DEMANDED

12 Plaintiff,

Plaintiff,

vs.

14 AVINGER, INC.; JEFFREY M. SOINSKI; JOHN
15 B. SIMPSON; MATTHEW B. FERGUSON;
16 DONALD A. LUCAS; JAMES B. MCELWEE;
17 JAMES G. CULLEN; CANACCORD GENUITY
INC.; COWEN AND COMPANY LLC;
OPPENHEIMER & CO. INC.; BTIG, LLC; and
STEPHENS INC..

Defendants.

17-CIV-02307
CMP
Complaint
523052



CLASS ACTION COMPLAINT

CLASS ACTION COMPLAINT

2 Plaintiff Kyle Olberding (“Plaintiff”), individually and on behalf of all others similarly situated,
3 by Plaintiff’s undersigned attorneys, alleges the following based upon personal knowledge as to
4 Plaintiff’s own acts, and upon information and belief as to all other matters based on the investigation
5 conducted by and through Plaintiff’s attorneys, which included, among other things, a review of
6 Securities and Exchange Commission (“SEC”) filings, analyst and media reports, and other commentary
7 analysis. Plaintiff’s investigation into the matters alleged herein is continuing and many relevant facts
8 are known only to, or are exclusively within the custody and control of, the Defendants. Plaintiff
9 believes that substantial additional evidentiary support will exist for the allegations set forth herein after
10 a reasonable opportunity for formal discovery.

NATURE AND SUMMARY OF THE ACTION

12 1. Plaintiff brings this action under §§11 and 15 of the Securities Act of 1933 (the “1933
13 Act”) against (1) Avinger Inc. (“Avinger” or the “Company”); (2) certain of the Company’s senior
14 executives and directors who signed the Registration Statement dated January 29, 2015 on Form S-1/A
15 filed in connection with the Company’s Initial Public Offering (the “Offering”), and (3) each of the
16 investment banks that acted as underwriters for the Offering (collectively, “Defendants”). Plaintiff
17 alleges that the Registration Statement (and Prospectus incorporated therein) contained materially
18 incorrect or misleading statements and/or omitted material information that was required by law to be
19 disclosed. Defendants are each strictly liable for such misstatements and omissions therefrom (subject
20 only, in the case of the Individual and Underwriter Defendants, to their ability to establish a “due
21 diligence” affirmative defense), and are so liable in their capacities as signers of the Registration
22 Statement and/or as an issuer, statutory seller, offeror, and/or underwriter of the shares sold pursuant to
23 the Offering. For all of the claims stated herein, *Plaintiff expressly disclaims any allegation that could*
24 *be construed as alleging fraud or intentional or reckless misconduct.*

2. Avinger was founded in 2007 and is headquartered in Redwood City, California.

26 3. Avinger is a commercial-stage medical device company that designs, manufactures, and
27 sells image-guided, catheter-based systems that are used by physicians to treat patients with peripheral

1 arterial disease, or PAD. Patients with PAD have a build-up of plaque in the arteries that supply blood
 2 to the arms and legs. The Company develops a lumivascular platform that integrates optical coherence
 3 tomography visualization with interventional catheters to provide real-time intravascular imaging during
 4 the treatment portion of PAD procedures. The Company sells and markets its products to interventional
 5 cardiologists, vascular surgeons, and interventional radiologists.

6 4. The Company's lumivascular products include Pantheris, an image-guided atherectomy
 7 device that allows physicians to remove arterial plaque in PAD patients.

8 5. On January 30, 2015, Avinger conducted an IPO in which \$65 million worth of shares
 9 were offered to the public. Five million shares were offered at a price of \$13.00 per share. Of the \$65
 10 million, Avinger received approximately \$60.45 million.

11 6. However, in violation of the federal securities laws, Defendants misleadingly failed to
 12 disclose that Avinger's Pantheris device had serious reliability and usability issues that would negatively
 13 impact sales.

14 7. Unbeknownst to investors, the Registration Statement's representations were materially
 15 inaccurate, misleading, and/or incomplete because they failed to disclose, *inter alia*, that the Pantheris
 16 device had reliability and usability problems that would prevent it from becoming a widely-used device,
 17 at least until further iterations of the device were successfully manufactured. Accordingly, the price of
 18 the Company's shares was artificially and materially inflated at the time of the Offering.

19 8. Unfortunately for investors who purchased the Company's shares pursuant or traceable to
 20 the Offering, the truth concerning the nature and extent of the problems facing the Company did not
 21 begin to emerge until after the Offering.

22 9. On July 12, 2016, the Company announced second quarter revenue of \$4.7 million,
 23 which was well below analysts' estimates of \$5.7 million, and lowered its sales guidance for 2016 from
 24 \$25 million-\$30 million to \$19 million-\$23 million, due in part to lower than anticipated sales of the
 25 Pantheris device.

26 10. In response to these disclosures, Avinger's stock plunged nearly 40%, from \$11.43 to
 27 \$6.89 per share, a drop of 47% from the IPO price.

1 11. By this action, Plaintiff, on behalf of himself and the other Class members who also
2 acquired the Company's shares pursuant or traceable to the Offering, now seek to obtain a recovery for
3 the damages they have suffered as a result of Defendants' violations of the Securities Act, as alleged
4 herein.

5 12. The claims asserted herein are purely strict liability and negligence claims. Plaintiff
6 expressly eschews any allegation sounding in fraud.

JURISDICTION AND VENUE

8 13. This Court has subject matter jurisdiction over this action pursuant to the California
9 Constitution, Article VI, §10 and Section 22 of the federal Securities Act, 15 U.S.C. §77v. This action is
10 not removable. The claims alleged herein arise under §§11, and 15 of the Securities Act. *See* 15 U.S.C.
11 §§77k and 77o. Section 22 of the Securities Act, 15 U.S.C. §77v(a), expressly states that “[e]xcept as
12 provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State
13 court of competent jurisdiction shall be removed to any court of the United States.” Section 77p(c) refers
14 to “covered class action[s] brought in any State court involving a covered security, as set forth in
15 subsection (b),” and subsection (b) of 77p in turn includes within its scope only covered class actions
16 “based upon the statutory or common law of any State or subdivision thereof.” *See* 15 U.S.C. §77p. This
17 is an action asserting only federal law claims. Thus, this action is not removable to federal court.

18 14. This Court has personal jurisdiction over each Defendant named herein because each
19 conducted business in, resided in, and/or was a citizen of California at the time of the Offering.

20 15. Venue is proper because the Company is headquartered in this county.

PARTIES

22 A. Plaintiff

23 16. Plaintiff Kyle Olberding purchased shares of the Company's common stock that were
24 issued pursuant and traceable to the Registration Statement and the Offering and was damaged thereby.

25 | B. Defendants

17. Defendant Avinger is a commercial-stage medical device company that designs,
manufactures, and sells image-guided, catheter-based systems that are used by physicians to treat

1 patients with PAD. Avinger is a Delaware corporation with its principal executive office in Redwood
 2 City, California. Its shares are listed and trade on the NASDAQ Stock Market under the ticker symbol
 3 "AVGR."

4 18. At the time of the IPO, Defendant Jeffrey M. Soinski was the President and Chief
 5 Executive Officer of Avinger and also a director. Soinski participated in preparing the Prospectus and
 6 Registration Statement, which Defendant signed.

7 19. At the time of the IPO, Defendant Matthew B. Ferguson was the Chief Financial Officer
 8 and Chief Business Officer of Avinger. Ferguson participated in preparing the Prospectus and
 9 Registration Statement, which Defendant signed.

10 20. At the time of the IPO, Defendant Donald A. Lucas was a director of Avinger. Lucas
 11 participated in preparing the Prospectus and Registration Statement, which Defendant signed.

12 21. At the time of the IPO, Defendant John B. Simpson, Ph.D., M.D. was the Executive
 13 Chairman of the Board of Directors of Avinger. Simpson participated in preparing the Prospectus and
 14 Registration Statement, which Defendant signed.

15 22. At the time of the IPO, Defendant James B. McElwee was a director of Avinger.
 16 McElwee participated in preparing the Prospectus and Registration Statement, which Defendant signed.

17 23. At the time of the IPO, Defendant James G. Cullen was a director of Avinger. Cullen
 18 participated in preparing the Prospectus and Registration Statement, which Defendant signed.

19 24. Defendants Soinski, Ferguson, Lucas, Simpson, McElwee, and Cullen are collectively
 20 referred to herein as the "Individual Defendants."

21 25. The following Underwriter Defendants were also instrumental in soliciting and making
 22 the stock offered in the Offering available to the investing public:

Name	Number of shares
Canaccord Genuity Inc.	1,750,000
Cowen and Company, LLC	1,750,000
Oppenheimer & Co. Inc.	500,000
BTIG, LLC	500,000
Stephens Inc.	500,000

1 26. Defendant Canaccord Genuity Inc. (“Canaccord”) was an underwriter of the Company’s
 2 Offering, served as a financial advisor for and assisted in the preparation and dissemination of the
 3 Company’s false and misleading Registration Statement and Prospectus. Canaccord acted as lead joint
 4 bookrunner in the Offering. Canaccord’s participation in the solicitation of the Offering was motivated
 5 by its financial interests. Defendant Canaccord conducts business in the state of California.

6 27. Defendant Cowen and Company, LLC (“Cowen”) was an underwriter of the Company’s
 7 Offering and assisted in the preparation and dissemination of the Company’s false and misleading
 8 Registration Statement and Prospectus. Cowen acted as lead joint bookrunner in the Offering. Cowen’s
 9 participation in the solicitation of the Offering was motivated by its financial interests. Defendant
 10 Cowen conducts business in the state of California.

11 28. Defendant Oppenheimer & Co. Inc. (“Oppenheimer”) was an underwriter of the
 12 Company’s Offering and assisted in the preparation and dissemination of the Company’s false and
 13 misleading Registration Statement and Prospectus. Oppenheimer’s participation in the solicitation of
 14 the Offering was motivated by its financial interests. Defendant Oppenheimer conducts business in the
 15 state of California.

16 29. Defendant BTIG, LLC (“BTIG”) was an underwriter of the Company’s Offering and
 17 assisted in the preparation and dissemination of the Company’s false and misleading Registration
 18 Statement and Prospectus. BTIG’s participation in the solicitation of the Offering was motivated by its
 19 financial interests. Defendant BTIG conducts business in the state of California.

20 30. Defendant Stephens Inc. (“Stephens”) was an underwriter of the Company’s Offering and
 21 assisted in the preparation and dissemination of the Company’s false and misleading Registration
 22 Statement and Prospectus. Stephens’ participation in the solicitation of the Offering was motivated by
 23 its financial interests. Defendant Stephens conducts business in the state of California.

24 31. Defendants Canaccord, Cowen, Oppenheimer, BTIG, and Stephens are referred to
 25 collectively as the “Underwriter Defendants.”

26 32. Pursuant to the Securities Act, the Underwriter Defendants are liable for the false and
 27 misleading statements in the Offering’s Registration Statement and Prospectus. The Underwriter
 28

1 Defendants' failure to conduct adequate due diligence investigations was a substantial factor leading to
 2 the harm complained of herein.

3 33. The Underwriter Defendants are primarily investment banking houses which specialize,
 4 *inter alia*, in underwriting public offerings of securities. As the underwriters of the Offering, the
 5 Underwriter Defendants earned lucrative underwriting fees as a result of their participation in the
 6 Offering.

7 34. In addition, the Underwriter Defendants met with potential investors and presented highly
 8 favorable but materially incorrect and/or materially misleading information about the Company, its
 9 business, products, plans, and financial prospects, and/or omitted to disclose material information
 10 required to be disclosed under the federal securities laws and applicable regulations promulgated
 11 thereunder.

12 35. Representatives of the Underwriter Defendants also assisted the Company and the
 13 Individual Defendants in planning the Offering. They also purported to conduct an adequate and
 14 reasonable investigation into the business, operations, products, and plans of the Company, an
 15 undertaking known as a "due diligence" investigation. During the course of their "due diligence," the
 16 Underwriter Defendants had continual access to confidential corporate information concerning the
 17 Company's business, financial condition, products, plans, and prospects.

18 36. In addition to having access to internal corporate documents, the Underwriter Defendants
 19 and/or their agents, including their counsel, had access to the Company's lawyers, management,
 20 directors, and top executives to determine: (i) the strategy to best accomplish the Offering; (ii) the terms
 21 of the Offering, including the price at which the Company's common stock would be sold; (iii) the
 22 language to be used in the Registration Statement; (iv) what disclosures about the Company would be
 23 made in the Registration Statement; and (v) what responses would be made to the SEC in connection
 24 with its review of the Registration Statement. As a result of those constant contacts and
 25 communications between the Underwriter Defendants' representatives and the Company's management
 26 and top executives, at a minimum, the Underwriter Defendants should have known of the Company's
 27
 28

1 undisclosed existing problems and plans, and the material misstatements and omissions contained in the
 2 Registration Statement as detailed herein.

3 37. The Underwriter Defendants caused the Registration Statement to be filed with the SEC
 4 and to be declared effective in connection with offers and sales of the Company's shares pursuant and/or
 5 traceable to the Offering and relevant offering materials, including to Plaintiff and the Class.

6 **SUBSTANTIVE ALLEGATIONS**

7 **I. THE OFFERING AND THE COMPANY'S MATERIALLY MISLEADING AND
 8 INCOMPLETE REGISTRATION STATEMENT AND PROSPECTUS**

9 38. The Registration Statement and Prospectus used to effectuate Avingers's Offering was
 10 false and misleading in that it misled investors with respect to potential sales of its Pantheris device.
 11 This information was highly material to investors because the Company was "largely dependent on the
 12 successful development and commercialization of Pantheris," according to its Offering documents.

13 39. Given the Individual Defendants' interest in ensuring a favorably high offering price, it is
 14 hardly surprising that the Company's Registration Statement and Prospectus incorporated therein
 15 presented a highly positive picture of the Company's business, performance, prospects and products,
 16 while omitting crucial realities.

17 40. The Registration Statement made the following representations concerning its business
 18 and the Pantheris device:

19 We believe that Pantheris, if cleared by FDA, will significantly enhance
 20 our market opportunity within PAD and can expand the overall
 21 addressable market for PAD endovascular procedures.

22 41. The Registration Statement made the following representations concerning its business
 23 and the Pantheris device:

24 Based on the currently available data, we believe that we are on track to
 25 meet or exceed the requirements necessary to meet the [Pantheris
 26 VISION] trial's primary efficacy endpoint.

27 42. The Registration Statement made the following representations concerning its business
 28 and the PAD market:

29 According to an article published in The Lancet, the global prevalence of
 30 PAD was estimated at 202 million people in 2010. The prevalence of PAD
 31 in the United States alone was estimated at 18 million people in 2010 and

is projected to grow to 21 million people by 2020 according to the Sage Group. Despite its prevalence, PAD is underdiagnosed and undertreated relative to many other serious vascular conditions, including coronary artery disease, or CAD, in part because many PAD patients are asymptomatic or dismiss their symptoms as normal signs of aging. Despite the relative undertreatment of PAD, Millennium Research Group estimates that over 570,000 catheter-based PAD procedures in the pelvis and legs were performed in the United States in 2013, which corresponded to a \$1.0 billion market. Millennium Research Group also estimates that the number of catheter-based PAD procedures will grow to 700,000 in 2017, representing a \$1.2 billion market in the United States. Higher diagnosis and intervention rates resulting from greater physician and patient awareness of PAD, as well as higher prevalence, may significantly expand the market opportunity for PAD treatments, according to Millennium Research Group.

9 43. The Registration Statement made the following representations concerning its business
10 and the Pantheris device:

Pantheris, if cleared by FDA, is designed to enable physicians to successfully perform atherectomy procedures and remove plaque blockages in PAD patients using fewer balloons and stents. By avoiding the use of stents in atherectomy procedures, we believe that Pantheris better preserves future treatment options.

14 44. The Registration Statement made the following representations concerning its business
15 and the Pantheris device:

We expect to grow our sales force in preparation for the commercial launch of Pantheris in order to increase the base of customers using our lumivascular platform products.

18 45. The foregoing statements were false and misleading because, unbeknownst to investors
19 or the members of the Class, at the time of the Offering, the Pantheris device had serious reliability and
20 usability problems, beyond the fact that it had not yet been approved by the FDA.

21 46. Furthermore, because this case involves a Registration Statement, Defendants also had an
22 independent, affirmative duty to provide adequate disclosures about adverse conditions, risks, and
23 uncertainties. *See Item 303 of SEC Reg. S-K, 17 C.F.R. §229.303(a)(3)(ii).* Thus, Defendants had an
24 affirmative duty to ensure that the Registration Statement and the materials incorporated therein
25 disclosed material trends and uncertainties that they knew, or should have reasonably expected, would
26 have a materially adverse impact on Avinger's business. Defendants failed to fulfill this obligation as
27 well.

1 **II. THE TRUTH BEGINS TO EMERGE**

2 47. Unfortunately for investors, it was not until approximately July 12, 2016, after the
 3 Offering, that investors first began to learn the truth concerning Avinger that was not accurately
 4 disclosed in the Offering materials. On that date, in advance of its quarterly earnings release, the
 5 Company announced second quarter 2016 revenue of \$4.7 million, which was well below analysts'
 6 estimates of \$5.7 million. The company also lowered sales guidance for 2016 from \$25 million-\$30
 7 million down to just \$19 million-\$23 million.

8 48. The misses were tied to a poor rollout of Pantheris. In particular, Pantheris' original
 9 imaging fiber presented serious visualization challenges.

10 49. The Company held a conference call on July 12, 2016 to discuss the revised guidance.
 11 On that call, Defendant Soinski revealed that Avinger had been experiencing continued problems with
 12 the robustness of the Pantheris device. Defendant Simpson made similar revelations, adding that the
 13 issue was "primarily image fiber robustness," and stating that "if you pull too hard on the catheter to
 14 open it, the fiber could crack and when the fiber cracked the images would degrade." Simpson also
 15 stated the company had experienced safety problems with the balloons in the device being fragile and
 16 leaking.

17 50. In response to these disclosures, the Company's shares fell sharply, closing down nearly
 18 40%, from \$11.43 to \$6.89 per share.

19 51. As of the date of the complaint, Avinger currently trades approximately 97% below its
 20 Offering price.

21 **III. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

22 52. Plaintiff brings this action as a class action on behalf of a Class consisting of all those
 23 who purchased the Company's common stock pursuant or traceable to the Company's Offering and
 24 Registration Statement and who were damaged thereby (the "Class"). Excluded from the Class are
 25 Defendants; the officers and directors of the Company at all relevant times; members of their immediate
 26 families and their legal representatives, heirs, successors, or assigns; and any entity in which Defendants
 27 have or had a controlling interest.

1 53. The members of the Class are so numerous that joinder of all members is impracticable.
2 While the exact number of Class members is unknown to Plaintiff at this time and can only be
3 ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the
4 proposed Class. The members of the proposed Class may be identified from records maintained by the
5 Company or its transfer agent and may be notified of the pendency of this action by mail, using
6 customary forms of notice that are commonly used in securities class actions.

7 54. Plaintiff's claims are typical of the claims of the members of the Class as all members of
8 the Class are similarly affected by Defendants' wrongful conduct.

9 55. Plaintiff will fairly and adequately protect the interests of the members of the Class and
10 has retained counsel competent and experienced in class and securities litigation.

11 56. Common questions of law and fact exist as to all members of the Class and predominate
12 over any questions solely affecting individual members of the Class. Among the questions of law and
13 fact common to the Class are:

14 a. whether the federal securities laws were violated by Defendants' acts as alleged
15 herein;
16 b. whether the Prospectus and Registration Statement contained materially false and
17 misleading statements and omissions; and
18 c. to what extent Plaintiff and members of the Class have sustained damages and the
19 proper measure of damages.

20 57. A class action is superior to all other available methods for the fair and efficient
21 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
22 damages suffered by individual Class members may be relatively small, the expense and burden of
23 individual litigation make it impossible for members of the Class to individually redress the wrongs
24 done to them. There will be no difficulty in the management of this action as a class action.

FIRST CLAIM

58. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

59. This Claim is brought pursuant to §11 of the 1933 Act, 15 U.S.C. §77k, on behalf of the Class, against each of the Defendants.

60. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted facts necessary to make the statements made therein not misleading, and omitted to state material facts required to be stated therein.

61. The Company is the issuer of the securities purchased by Plaintiff and the Class. As such, the Company is strictly liable for the materially inaccurate statements contained in the Registration Statement and the failure of the Registration Statement to be complete and accurate.

62. The Individual Defendants each signed the Registration Statement. As such, each is strictly liable for the materially inaccurate statements contained in the Registration Statement and the failure of the Registration Statement to be complete and accurate, unless they are able to carry their burden of establishing an affirmative “due diligence” defense. The Individual Defendants each had a duty to make a reasonable and diligent investigation of the truthfulness and accuracy of the statements contained in the Registration Statement, and to ensure that they were true and accurate, that there were no omissions of material facts that would make the Registration Statement misleading, and that the document contained all facts required to be stated therein. In the exercise of reasonable care, the Individual Defendants should have known of the material misstatements and omissions contained in the Registration Statement and also should have known of the omissions of material fact necessary to make the statements made therein not misleading. Accordingly, the Individual Defendants are liable to Plaintiff and the Class.

63. The Underwriter Defendants each served as underwriters in connection with the Offering. As such, each is strictly liable for the materially inaccurate statements contained in the Registration Statement and the failure of the Registration Statement to be complete and accurate, unless they are able

1 to carry their burden of establishing an affirmative “due diligence” defense. These Defendants each had
2 a duty to make a reasonable and diligent investigation of the truthfulness and accuracy of the statements
3 contained in the Registration Statement. They had a duty to ensure that they were true and accurate, that
4 there were no omissions of material facts that would make the Registration Statement misleading, and
5 that the documents contained all facts required to be stated therein. In the exercise of reasonable care,
6 the Underwriter Defendants should have known of the material misstatements and omissions contained
7 in the Registration Statement and also should have known of the omissions of material facts necessary to
8 make the statements made therein not misleading. Accordingly, each of the Underwriter Defendants is
9 liable to Plaintiff and the Class.

10 64. By reasons of the conduct herein alleged, each Defendant violated §11 of the Securities
11 Act.

12 65. Plaintiff acquired the Company's common stock pursuant or traceable to the Registration
13 Statement, and without knowledge of the untruths and/or omissions alleged herein. Plaintiff sustained
14 damages, and the price of the Company's common stock declined substantially due to material
15 misstatements in the Registration Statement.

16 66. This claim was brought within one year after the discovery of the untrue statements and
17 omissions and within three years of the date of the Offering.

18 67. By virtue of the foregoing, Plaintiff and the other members of the Class are entitled to
19 damages under §11 as measured by the provisions of §11(e) from the Defendants and each of them,
20 jointly and severally.

SECOND CLAIM

23 68. Plaintiff repeats and realleges each and every allegation contained above as if fully set
24 forth herein.

25 69. This claim is brought pursuant to §15 of the 1933 Act, 15 U.S.C. §77o, on behalf of the
26 Class, against the Individual Defendants.

1 70. The Individual Defendants were controlling persons of the Company within the meaning
2 of §15 of the 1933 Act. By reason of their ownership interest in, senior management positions at, and/or
3 directorships held at the Company, as alleged above, these Defendants invest in, individually and
4 collectively, had the power to influence, and exercised the same, over the Company to cause it to engage
5 in the conduct complained of herein. By reason of such conduct, the Individual Defendants are liable
6 pursuant to §15 of the 1933 Act.

7 71. By reason of such wrongful conduct, the Individual Defendants are liable pursuant to §15
8 of the Securities Act. As a direct and proximate result of the wrongful conduct, Class members suffered
9 damages in connection with their purchases of the Company's shares.

REQUEST FOR RELIEF

11 WHEREFORE, Plaintiff prays for judgment as follows:

12 A. Declaring this action to be a proper class action and certifying Plaintiff as Class
13 representative;

14 B. Awarding Plaintiff and the other members of the Class compensatory damages;

15 D. Awarding Plaintiff and the other members of the Class pre-judgment and post-judgment
16 interest, as well as reasonable attorneys' fees, expert witness fees, and other costs and disbursements;
17 and

18 E. Awarding Plaintiff and the other members of the Class such other and further relief as the
19 Court may deem just and proper.

JURY TRIAL DEMANDED

21 Plaintiff hereby demands a trial by jury.

Dated: May 25, 2017

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

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— and —

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John T. Jasnoch Scott & Scott, Attorneys at Law, LLP 707 Broadway, Suite 1000 San Diego, CA 92101 TELEPHONE NO: 619-233-4565 ATTORNEY FOR (Name): Kyle Olberding		FOR COURT USE ONLY FILED SAN MATEO COUNTY MAY 25 2017 Clerk of the Superior Court CLERK'S CLEW 17CIV02307	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern Branch: Hall of Justice and Records			
CASE NAME: Kyle Olberding v. Avinger, Inc., et al			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: 17CIV02307 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input checked="" type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 2 (Violations of 15 U.S.C. §§77k and 77o)

5. This case is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 25, 2017

John T. Jasnoch

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by the California Rules of Court.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, file this cover sheet in addition to any cover sheet required by the California Rules of Court.
- Unless this is a collections case under rule 3.740 or a case under the California Probate Code, file this cover sheet in addition to any cover sheet required by the California Probate Code.

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copy of this cover sheet on all

for statistical purposes only.

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